AMOCO CORP.

IBLA 94-69 Decided April 24, 1997

Appeal from a decision of the Kemmerer, Wyoming, Resource Area Manager, Bureau of Land Management, adjusting rental charges for Right-of-way WYW-88864.

Set aside and remanded.

1. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

   Rental for a salt water disposal well right-of-way may properly be appraised by BLM on a per barrel basis where supported by a market study of comparable rentals or a value determination for specific parcels and no error has been shown in the appraisal method. However, a BLM decision establishing rental on such a basis will be set aside where the affected right-of-way grant does not authorize the disposal of salt water but simply permits the use of an existing access road and well pad and the construction and use of a pipeline.

APPEARANCES: Robert G. Leo, Jr., Esq., Denver, Colorado, for Appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Amoco Corporation (Amoco) has appealed from the October 7, 1993, Decision of the Kemmerer, Wyoming, Resource Area Manager, Bureau of Land Management (BLM), adjusting the rental for Right-of-way WYW-88864 to $0.05 per barrel of disposed salt water and assessing $27,622 as the estimated rental for calendar year 1994.

Amoco filed its right-of-way application on October 9, 1984, seeking authority to construct and use a water pipeline from an existing right-of-way to the Chevron 1-20 EA disposal well located in sec. 20, T. 17 N., R. 119 W., Sixth Principal Meridian, Uinta County, Wyoming. 1/ Amoco

1/ Chevron drilled the Federal 1-20 EA well in 1980 on its Federal Oil and Gas Lease W-59154. Chevron abandoned the well, which was located in the SE¼ NE¼ sec. 20, T. 17 N., R. 119 W., Sixth Principal Meridian, Uinta

amended the application on November 7, 1984, to include the use of an existing well pad and well access road.

On December 7, 1984, BLM issued Right-of-way WYW-88864 to Amoco pursuant to section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1761 (1994), authorizing the use of a 4.29-acre existing well pad, a buried 4-inch pipeline on a right-of-way 50 feet wide and 1,562.19 feet long, and an existing access road 50 feet wide and 936.2 feet long located in the NE¼ NE¼ sec. 20, T. 17 N., R. 119 W., Sixth Principal Meridian, Uinta County, Wyoming. Paragraph 7 of the grant assessed annual rental in the amount of $416 beginning with the period from November 1, 1984, to November 1, 1985, and provided for the readjustment of the rental "whenever necessary to place the charges on the basis of fair market value of use authorized by this grant."

On March 27, 1985, the Wyoming Department of Environmental Quality (DEQ) issued a permit approving Amoco's operation of the Whitney Canyon Gas Plant Disposal Well #2 (formerly known as the Chevron Federal 1-20 EA well), located in the SE¼ NE¼ sec. 20, T. 17 N., R. 119 W., Sixth Principal Meridian, Uinta County, Wyoming, for the subsurface disposal of industrial wastes. The Acting Assistant District Manager, Mineral Resources, Rock Springs District Office, BLM, informed the Kemmerer Area Manager of Amoco's DEQ Permit in a Memorandum dated April 11, 1985, and advised that a right-of-way appeared to be required for the proposed disposal well sited on the terminated lease previously operated by Chevron. No right-of-way expressly granting Amoco the right to dispose of water into the Whitney Canyon Disposal Well #2 was ever issued, however.

On May 3, 1985, the Acting Assistant District Manager approved Amoco's application for a subsurface discharge permit for the well in accordance with Notice to Lessees and Operators, NTL-2B (NTL-2B). 40 Fed. Reg. 57814 (Dec. 12, 1975). 2/

In a Decision dated January 9, 1990, BLM converted the rental period for Right-of-way WYW-88864 to a calendar year basis. The BLM reappraised the Right-of-way rental in September 1990 and by Decision dated September 28, 1990, informed Amoco that the annual rental had been increased to $550 beginning January 1, 1991.

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fn. 1 (continued)
County, Wyoming, on Aug. 3, 1982. Chevron's Oil and Gas Lease terminated on Aug. 31, 1984, for lack of production. Since Chevron had not yet reclaimed the well site, Amoco advised Chevron of its desire to use the existing wellbore for water disposal and agreed to accept the responsibility for site rehabilitation. See Letter dated Apr. 26, 1985, from Amoco to BLM at 1.

2/ NTL-2B has been superseded by Onshore Oil and Gas Order No. 7. 58 Fed. Reg. 47361 (Sept. 8, 1993).

In January 1993, the Wyoming State Office, BLM, conducted a market survey of salt water injection well and evaporating pit leases in Wyoming, Utah, Montana, and New Mexico. The Appraisal Report documenting the survey utilized the comparable lease appraisal method and found that, although rental for salt water disposal leases previously had been established based on a fee for surface use rights, the market now had shifted to a per barrel rental basis. The Report concluded that the fair market rental value for salt water injection wells and evaporative pits was $0.05 per barrel of disposed water.

The BLM reappraised the rental for Amoco's Right-of-way in light of the Wyoming State Office's conversion from site rentals to rentals based on a per barrel fee for produced water disposal sites. By Decision dated October 7, 1993, BLM notified Amoco that, in accordance with a September 21, 1993, Appraisal, the approved market rental for Amoco's salt water disposal well was $0.05 per barrel. Relying on the number of disposed barrels specified in Amoco's 1992 NTL-2B Report, BLM estimated the rental due for calendar year 1994 as $27,622. The BLM advised Amoco that, upon receipt of Amoco's 1993 NTL-2B Report in January 1994, the rental would be recalculated based on the actual number of barrels disposed during 1993.

On appeal, Amoco contends that Right-of-way WYW-88864 authorizes only the use of a well pad, pipeline, and access road, not subsurface use or water disposal activity. Since the Right-of-way conveys no subsurface rights, Amoco asserts that a proper appraisal of the fair market rental for the grant includes only the value of the well pad, pipeline, and road surface uses. Amoco maintains that approval for its disposal of produced water comes from the Wyoming DEQ Permit allowing subsurface disposal of industrial waste and the BLM NTL-2B Subsurface Discharge Permit, neither of which require the payment of rentals or contemplate appraisals. Amoco, therefore, submits that BLM's assessment of a per barrel rental for the right-of-way grant pursuant to an appraisal of salt water disposal wells and evaporative pits must be reversed or modified due to the appraisal's inapplicability to Amoco's surface use only grant. Amoco requests that BLM's Decision be rescinded, and that rental for the Right-of-way be based on the fair market value of the designated purposes of the grant. 3/

In its Answer, BLM concedes that no explicit language in the Right-of-way grants Amoco the right to dispose of produced water into the disposal well on public land, but maintains that both Amoco and BLM contemplated that use when Amoco filed its application. The BLM contends that Amoco,

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3/ Alternatively, Amoco suggests that its water disposal well benefits many producing Federal wells in the area and promotes production to the absolute economic limits of the wells, and that rental should be governed by the same criteria that exempts gas used for the benefit of a lease from royalty under Federal royalty regulations. We do not reach that question.

as the right-of-way holder, must pay the fair market value rental for the grant, and that the Board has approved gauging rental for water disposal rights-of-way on a per barrel basis. The BLM submits that, by denying that the Right-of-way confers the right to use the disposal well, Amoco essentially negates the legality of its disposal activities and exposes itself to trespass charges. According to BLM, the NTL-2B Subsurface Discharge Permit does not suffice to authorize the disposal of water into a well on public lands since the purpose of that Permit is to protect the mineral estate of the United States, not to grant rights-of-way on public lands. The BLM notes that NTL-2B has been superseded by Onshore Oil and Gas Order No. 7, 58 Fed. Reg. 47363 (Sept. 8, 1993), which explicitly requires an operator disposing of water off-lease to have a right-of-way authorizing the injection of water into the well. Thus, if the Right-of-way does not empower Amoco to dispose of water into the well on public lands, BLM avers that Amoco is in trespass and must stop its activities immediately, file a right-of-way application, and pay trespass damages.

[1] Section 504(g) of FLPMA, as amended, 43 U.S.C. § 1764(g) (1994), requires the holder of a right-of-way to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal. See 43 C.F.R. § 2803.1-2(a) (requiring holder to pay "fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices"); Rock Creek Joint Venture, 138 IBLA 6, 12 (1997), and cases cited. An appraisal of fair market value for a right-of-way grant will not be set aside unless the appellant demonstrates error in the appraisal method used by BLM or shows that the resulting charges are excessive. Absent a showing of error in the appraisal methods, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive. See, e.g., Rock Creek Joint Venture, 138 IBLA at 13 and cases cited.

The Board has upheld fair market rental valuations based on a per barrel fee for salt water disposal injection well and surface site rights-of-way where appraisals utilizing the preferred comparable lease method establish that the fair market rental value for produced water disposal leases has shifted to a per barrel basis. Goldmark Engineering Inc., 137 IBLA 303, 305-06 (1997); Laguna Gatuna, Inc., 121 IBLA 302, 307 (1991); Mallon Oil Co., 104 IBLA 145, 151 (1988). Amoco does not challenge the validity of BLM's appraisal of the fair market value rental for salt water disposal rights-of-way. Instead, Amoco denies the applicability of that rental valuation to a right-of-way that does not authorize any subsurface use or water disposal activity. We agree.

The express terms of Right-of-way WYW-88864 provide only for the use of an existing well pad, a buried pipeline, and an existing access road in the NE¼ NE¼ sec. 20, T. 17 N., R. 119 W., Sixth Principal Meridian, Uinta County, Wyoming. According to both the DEQ Permit and the BLM NTL-2B Subsurface Discharge Permit, the disposal well is located in the

SE¼ NE¼ of that section. Thus, not only does the Right-of-way fail to include explicit authorization for water disposal activity, but the well into which the water is being discarded is not situated on the land covered by the grant. We, therefore, set aside BLM's Decision establishing the rental for Right-of-way WYW-88864 because the appraisal upon which the rental determination is based does not assess the fair market rental value of the uses bestowed by the grant, and we remand the case to BLM for recomputation of the fair market value rental of the specified uses.

The BLM has argued that, absent a right-of-way conferring the right to dispose of salt water into the disposal well located on public land, Amoco's subsurface discharge operation is unsanctioned and constitutes a trespass. Since no BLM decision on this issue has been made, this question is not properly before us. However, nothing in this opinion precludes BLM from reviewing the permissibility of Amoco's water disposal activities and issuing any appropriate orders.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's Decision is set aside, and the case is remanded for further action consistent with this opinion.

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David L. Hughes
Administrative Judge

I concur:

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James L. Byrnes
Chief Administrative Judge